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Attorneys for Plaintiff
OLD REPUBLIC INSURANCE COMPANY

FILED
FEB 7 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

OLD REPUBLIC INSURANCE COMPANY, a corporation, Plaintiff, vs. UNITED STATES OF AMERICA, and DOES 1 through 10, inclusive, Defendants.	'08 CV 0223 J JMA CASE NO.: **COMPLAINT FOR DAMAGES AND REQUEST FOR ADVISORY JURY**

Plaintiff, OLD REPUBLIC INSURANCE COMPANY, sues defendant, UNITED STATES OF AMERICA ("UNITED STATES"), for damages, and respectfully alleges as follows:

JURISDICTION AND VENUE

1. The jurisdiction of this Court against UNITED STATES exists pursuant to 28 U.S.C. section 1346(b) as this claim is based on the Federal Tort Claims Act, 28 U.S.C. sections 2671 et seq. in that it is a claim against the United States of America for money damages, caused by the negligence or wrongful act or omission of an employee of the United States Government, while acting within the scope of his or her office or employment, under circumstances where the United States, if a private

person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. In addition, jurisdiction is also proper pursuant to 28 U.S.C. section 1331 as this case presents a federal question.

2. That at all times herein mentioned, the negligence or wrongful acts or omissions complained of herein were by and through an employee of the United States of America while acting within the scope of his or her office or employment and, at all times herein mentioned, the negligence or wrongful acts or omissions occurred within the Southern District of California.

3. That venue pursuant to 28 U.S.C. section 1402(b) is proper within the United States District Court, Southern District of California, in that the accident occurred within the Southern District of California.

4. That prior to the commencement of this action and within the time permitted by law, plaintiff filed an administrative claim for damages with the Federal Aviation Administration (hereinafter "FAA") on or about May 9, 2007; and, said claims are now deemed denied by operation of law, pursuant to 28 U.S.C. section 2675(a). The FAA is an instrumentality of the UNITED STATES.

5. At all times herein mentioned, named defendants and DOES 1-10 were either the employees, agents, associates, or partners of each other and all times mentioned were acting within such scope of employment, agents, association or partners.

6. The true names and capacity of defendants named herein as DOES 1-10 are unknown to plaintiff who therefore sue such defendants, and each of them, by said fictitious names. Plaintiff will amend this complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes and thereon alleges that each of said fictitiously named defendants are responsible in some manner for the occurrence herein alleged and that plaintiffs' injuries as herein alleged were caused by defendants.

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GENERAL ALLEGATIONS

7. At all relevant times, OLD REPUBLIC INSURANCE COMPANY ("plaintiff") was, and now is, authorized to provide workers' compensation insurance in California and at all times herein mentioned insured Scandianian Aviation Academy, Inc. against liability to its employees for compensation benefits under the workers' compensation laws of the State of California.

8. At all times herein mentioned, Scandianian Aviation Academy, Inc. ("employer") was the employer of Andres Olof Sigurdson.

9. At all relevant times there was in full force and effect California Labor Code section 3852 which provides, inter alia, that a workers' compensation insurer can recover from any party responsible for injuries to an employee, benefits and money the workers' compensation insurer was obligated to pay as a result of those injuries.

10. OLD REPUBLIC INSURANCE COMPANY was obligated to pay and has paid benefits as a result of the death of Andres Olof Sigurdson in the course and scope of his employment at Scandianian Aviation Academy, Inc.

11. On February 8, 2006, Anders Olof Sigurdson was flying aboard a certain single engine Cessna 172RG aircraft, FAA registration number N953I B (**"subject aircraft"**), on an instrument flight rules ("IFR") flight from Gillespie Filed, EI Cajon (**"subject airfield"**) with an intended destination of Brown Field Municipal Airport, San Diego, California ("the subject flight"), when, at approximately 4:40 p.m., the subject aircraft was struck in midair by a Cessna 182 and subsequently crashed approximately three (3) miles south of Gillespie Field, causing the death of Anders Olof Sigurdson. At the time of the accident, Anders Olof Sigurdson was in the course and scope of his employment with Scandianian Aviation Academy, Inc.

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FIRST CLAIM AGAINST

DEFENDANT UNITED STATES FOR NEGLIGENCE

12. Plaintiffs hereby incorporate by reference as if set forth in full herein paragraphs 1 through 11 above.

13. At all pertinent times, the subject flight was under the control and surveillance of Air Traffic Control ("ATC") personnel employed by the FAA charged with providing ATC services, including, but not limited to, issuance of safety alerts, conflict alerts, aircraft traffic separation services, vector and route of flight instructions, take-off instructions, warnings, landing clearances, navigational assistance, weather data, surveillance, guidance, instructions and other services as set forth in the ATC Handbook, FAA Order 7110.65 and other rules, regulations and standards adopted by the FAA.

14. While the subject flight was in the area of the subject airport, ATC services were provided by FAA ATC personnel located at the Gillespie Field Air Traffic Control Tower and the Southern California Terminal Radar Approach Control Facility ("SCT TRACON").

15. At all pertinent times, defendant, UNITED STATES, employed at the above-mentioned air traffic service facilities certain air traffic controllers, personnel and employees who at all times herein mentioned were acting within the course and scope of their employment as air traffic controllers and air traffic service facility personnel and employees.

16. Said crash, injuries, death and resulting damages were caused or contributed to by the careless, negligent and wrongful acts and/or omissions to act of the United States, through its agents, servants and employees, including the FAA and its ATC personnel, acting within the scope of their employment, in that, among other things, the United States:

a. failed to properly observe and monitor the subject aircraft and aircraft traffic in the vicinity of the subject aircraft;

b. failed to provide the subject aircraft and other traffic in the area with required traffic advisories;

c. failed to perceive critical safety and conflict alert warnings and timely relay the information and required alerts and/or instructions to the subject aircraft;

d. failed to issue required safety and/or conflict and or collision alerts to the subject aircraft as required despite repeated visual and aural warnings of an impending collision;

e. provided erroneous instructions to aircraft in the area which resulted in a mid-air collision with the subject aircraft;

f. failed to take appropriate and required action to correct and avoid the hazardous situation;

g. failed to ensure that the ATC personnel charged with monitoring and controlling the subject aircraft were properly trained and supervised and properly executed their responsibilities;

h. violated the requirements set forth in the ATC Handbook and other applicable FAA rules, regulations and standards; and

i. deviated from good, sound, reasonable and safe air traffic control practices and was otherwise negligent.

17. As a result of the foregoing, Anders Olof Sigurdson perished in the course and scope of his employment thereby obligating plaintiff to pay workers' compensation benefits.

SECOND CLAIM FOR RELIEF FOR NEGLIGENCE PER SE
AGAINST DEFENDANT UNITED STATES OF AMERICA

18. Plaintiff hereby incorporates by reference as set forth in full herein paragraphs 1 through 17 above.

19. Defendant UNITED STATES violated applicable statutes, regulations, orders and rules relating to the provision of ATC services including, but not limited

to, violation of the ATC Handbook, FAA Order No. 7110.65.

20. As a result of the foregoing, Anders Olof Sigurdson perished in the course and scope of his employment thereby obligating plaintiff to pay workers' compensation benefits.

WHEREFORE, plaintiff prays for judgment against defendant UNITED STATES. as follows:

1. For the amount of workers' compensation benefits paid according to proof;
2. For prejudgment interest as allowed by law;
3. For costs of suit incurred herein; and,
4. For such other and further relief as the Court may deem just and proper.

DATED: January 29, 2008

MICHAELIS, MONTANARI & JOHNSON

By: [signature]
GARRY L. MONTANARI
Attorneys for Plaintiff
OLD REPUBLIC INSURANCE COMPANY

7509\pld\p-complaint.1

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 147439 - BH
*** * C O P Y * ***
February 08, 2008
16:35:46

Civ Fil Non-Pris
USAO #.: 08CV0223 CIVIL FILING
Judge..: NAPOLEON A JONES, JR
Amount.: $350.00 CK
Check#.: BC# 21164

Total-> $350.00

FROM: OLD REPUBLIC INSURANCE V. U.S.
CIVIL FILING

JS 44 (Rev. 11/04)

FILED

FEB 7 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
OLD REPUBLIC INSURANCE COMPANY, a corporation

DEFENDANTS
UNITED STATES OF AMERICA; and DOES 1 through 10, inclusive

(b) County of Residence of First Listed Plaintiff: Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Garry L. Montanari, Michaelis, Montanari & Johnson, 4333 Park Terrace Dr. #110, Westlake Village, CA 91361; 818.865.0444

Attorneys (If Known)

'08 CV 0223 J JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☒ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
28 U.S.C. SECTION 2671

Brief description of cause:
aircraft mid-air collision

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 275,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Barry Ted Moskowitz DOCKET NUMBER 07-cv-00367-BTM; 07-cv-1133-BTM

DATE: January 28, 2008

SIGNATURE OF ATTORNEY OF RECORD: GARRY L. MONTANARI [signature: Garry L. Montanari]

FOR OFFICE USE ONLY

RECEIPT # 147439 AMOUNT $350 2/8/08 BH APPLYING IFP ________ JUDGE ________ MAG. JUDGE ________

OR

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.